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Paper No. 6

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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of: :
Penry et al. :
Application No. 09/533,705 : DECISION REFUSING STATUS
Filed: March 23, 2000 : UNDER 37 CFR 1.47(a)
Att'ney Dckt No. NSC1-G3900 :

This is a decision on the petition filed October 10, 2000, under 37 CFR 1.47(a) requesting that this application be accorded status.

The petition is dismissed.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. **FAILURE TO RESPOND WILL RESULT IN THE ABANDONMENT OF THIS APPLICATION.** The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.47(a)."

A grantable petition under 37 CFR 1.47(a) requires (1) a petition including proof of the pertinent facts establishing the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort, (2) an oath or Declaration in compliance with 37 CFR 1.63 executed by the available joint inventor(s), (3) the fee as specified in 37 CFR § 1.17(h), and (4) the last known address of the omitted inventor(s). This petition lacks items (1) above.

This application was filed on March 23, 2000, and in reply to the Notice of Missing Parts of June 12, 2000, applicants filed *inter alia*, the instant petition, and a declaration lacking the signature of joint inventor Russell Flack.

The above application and papers have been reviewed but have not been found in compliance with 37 CFR 1.47(a) based upon the following reasons:

(1) Applicant has failed to show or provide adequate proof that a diligent effort was made to reach or locate Flack. However, the applicable statute (35 USC 116) requires that a "diligent effort" have been expended in attempting to find or reach the non-signing inventor. See MPEP 409.03(a). The record currently fails to demonstrate, with a documented showing, that a diligent effort was made to find or locate Flack, such that the declaration can be accepted under 37 CFR 1.47. Such is required for any renewed petition.

Where inability to find or locate a named inventor(s) is alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor. The statement(s) of facts must be signed, where at all possible, by a person having *firsthand knowledge* of the facts recited therein. Statements based on hearsay, will not normally be accepted. At the very least, a search should be made of the telephone directories of the Tempe area. What does inspection of the phone directories for those address locations reveal? Copies of the results of the search must be referred to in any renewed petition. See MPEP 409.03(d). If Flack is located, then a copy of the transmittal letter itemizing the complete application papers, as well as a copy of the proof of service on Flack will be required. Petitioner is advised that if the research reveals that Flack is now deceased, then his legal representative or heirs will have to be proffered the complete application papers for signature. See also MPEP 409.01(a), (b); MPEP 409.03(c). Petitioner is advised that an extremely brief Internet search revealed that there is Russell Flack, resides at 10670 E Firehorn Dr., Scottsdale, AZ 85259, at telephone number (480) 419-0830 of which fact Petitioner should take note.

It is important that the forthcoming communication contain statements of fact as opposed to conclusions. If there is an express oral refusal, a statement from the person to whom that refusal was made should be made of record.

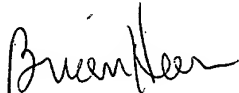
Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza 4, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to Kien Nguyen at (703) 306-5592, or in his absence, the undersigned at (703) 305-1820.



Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects